

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

LUZ GONZALEZ NIEVES,

Plaintiff,

v.

MUNICIPALITY OF AGUADILLA, et al.,

Defendants.

Civil No. 3:13-cv-01132 (JAF)

**MEMORANDUM OF OPINION AND ORDER**

This matter is before the court on Defendant Municipality of Aguadilla's Renewed Motion for Judgment as a Matter of Law pursuant to Fed. R. Civ. P. 50(b) and, in the alternative, its motion for a new trial or to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(a) and (e). (Docket No. 152). The parties have fully briefed the matter and it is ripe for review.

**I.**

**PROCEDURAL HISTORY**

Plaintiff Luz M. Gonzalez Nieves (hereinafter, "Plaintiff") commenced this action against her employer, the Municipality of Aguadilla (hereinafter, "Defendant")<sup>1</sup>, alleging discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*, retaliation in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, and P.R. Laws Ann. tit. 1 § 501 and P.R. Laws Ann. tit. 29 § 194a. The

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<sup>1</sup> Plaintiff also brought claims against Carlos Mendez-Martinez, personally and as Mayor of Aguadilla, and against Nannette Guevara-Perez, personally, under the ADA, ADAA, the Rehabilitation Act and Puerto Rico Law 44 and Puerto Rico Law 44. The court dismissed the personal capacity claims brought under the ADA, ADAA, the Rehabilitation Act and Puerto Rico Law 44 as these statutes do not provide for individual or personal liability. (Docket No. 61). Plaintiff later voluntarily dismissed her remaining personal liability claims under Puerto Rico Law 115. (Docket No. 66).

1 court held a jury trial March 16-20, 2015. On March 20, 2015, the jury returned a verdict  
2 in favor of Plaintiff on all claims, awarding \$3,000,000 in compensatory damages, which  
3 doubles to \$6,000,000 under Puerto Rico law. Defendant renewed its motion for  
4 judgment as a matter of law and, in the alternative, for a new trial pursuant to Fed. R.  
5 Civ. P. 50(b) and 59(a). Additionally, Defendant moved for a remittitur.

## 6 II.

### 7 STANDARD OF REVIEW

8 A motion for judgment pursuant to Rule 50(b) of the Federal Rules of Civil  
9 Procedure, “may be granted only if a reasonable person, on the evidence presented, could  
10 not reach the conclusion that the jury reached.” *Visible Systems Corp. v. Unisys Corp.*,  
11 551 F.3d 65, 71 (1st Cir. 2008) (citation omitted). The court may not “evaluate the  
12 credibility of the witnesses or weigh the evidence.” *Cortés-Reyes v. Salas-Quintana*, 608  
13 F.3d 41, 47 (1st Cir. 2010) (citation omitted). We must view the evidence in the light  
14 most favorable to the verdict and determine whether “a rational jury could have found in  
15 favor of the party that prevailed.” *Id.* (quotation and citation omitted). The jury’s verdict  
16 may be vacated “[o]nly if the facts and inferences point so strongly and overwhelmingly  
17 in favor of the movant that a reasonable jury could not have [returned the verdict] will we  
18 set it aside.” *Id.* (quotation marks and citation omitted).

19 We may grant Defendant’s motion for a new trial “only if the verdict is against the  
20 clear weight of the evidence, such that letting it stand would result in a miscarriage of  
21 justice.” *Id.* (quotation marks and citation omitted). A motion for a new trial may be  
22 based on the claim that the verdict is against the weight of the evidence, that the damages

1 are excessive, or that the trial was not fair to the moving party, and may raise questions of  
2 law arising out of the trial. *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251  
3 (1940).

### 4 III.

### 5 FACTS

6 When viewing the facts most favorable to the Plaintiff here, a rational jury could  
7 have found the facts as follows.

8 Plaintiff González began working for the Defendant, Municipality of Aguadilla, as  
9 an administrative officer in August 1999 at the Office of the Federal Programs and the  
10 Aguadilla Municipal Police. In 2007, Defendant appointed Plaintiff to an Executive  
11 Officer I at the Micro Business Program, with four merit increases in salary. On June 30,  
12 2010, the Mayor notified Plaintiff that the Micro Business Program had lost funding and  
13 that she would be transferred to the Municipal Office for Emergency Management  
14 (“MOEM”), located at the Luis A. Canena Márquez Stadium (the “Stadium”), effective  
15 July 16, 2010. By July 7, 2010, just seven days after receipt of the transfer letter, Plaintiff  
16 had met with an attorney who sent a letter to Mayor Méndez challenging the transfer to  
17 MOEM, inter alia, because the conditions at the Stadium would be harmful to her health  
18 as she suffered from asthma. The mayor responded to the July 7<sup>th</sup> letter, but did not  
19 address Plaintiff’s health concerns. Instead, the mayor explained that Plaintiff’s previous  
20 experience training people at the Micro Business Program would be beneficial at MOEM  
21 where she would be giving seminars and orientations to business people and the general  
22 public regarding responding to natural disasters and other emergencies.

1 Plaintiff began working at the Stadium on August 16, 2010. On August 24, 2010,  
2 Plaintiff received her initial explanation of duties, which included her supervision of the  
3 administrative personnel at MOEM, from her supervisor. Ten days after Defendant  
4 transferred Plaintiff to the Stadium, Plaintiff visited her physician complaining of trouble  
5 breathing, chest pains, and wheezing. The only thing that had changed for Plaintiff was  
6 the location of her employment, at the Stadium she was being exposed to health hazards  
7 including fumes from coworkers smoking cigarettes near the time clock outside her  
8 office, cat feces, excrement from pigeons both inside the Stadium and the waste being  
9 washed off the seats of the stadium and running through her office ceiling. Over the  
10 four-and-a-half years that Plaintiff worked for MOEM at the Stadium, she suffered,  
11 among others ailments, substantial loss of her pulmonary function, deterioration of her  
12 diabetes, toxoplasmosis from the cat feces near her work station; altered mood,  
13 irritability, and Adjustment Disorder with Mixed Anxiety and Depressed Mood.

14 Over the course of her time at MOEM, Plaintiff received no fewer than nine  
15 certificates from Dr. Román requesting that Plaintiff be transferred out of the Stadium for  
16 health concerns. Plaintiff provided each certificate to Defendant, the first following her  
17 initial visit on August 26, 2010, along with the letter from her attorney requesting the  
18 transfer for a reasonable accommodation. At no point during the four and a half years did  
19 Defendant transfer Plaintiff out of MOEM or relocate her from the Stadium. Each day,  
20 Plaintiff arrived at work and sat through the day without performing any job functions  
21 essential to the Executive Officer I. Her asthmatic condition made breathing and moving  
22 difficult, and the assortment of medications she required to treat the asthma affected her

1 cognitive processes. Combined, Plaintiff's ailments made working at the Stadium  
2 difficult, if not impossible.

3 Despite Plaintiff's various and consistent complaints about the conditions at the  
4 Stadium, Defendant neither cured the conditions, nor moved Plaintiff out of the Stadium.  
5 Plaintiff produced evidence showing that the pigeon, cat, and bat droppings issue  
6 remained even after Defendant cleaned the Stadium in 2010. In fact, part of the problem  
7 was the manner of Defendant's cleaning of the Stadium and storage of cleaning supplies.  
8 Defendant used chlorine and ammonia simultaneously creating fumes that exasperated  
9 the health risks of Plaintiff's already suffering pulmonary system. When the Stadium  
10 was power washed, the feces made its way through the cracks and spaces of the Stadium  
11 seats, through the ceiling of the offices, and then leaked down Plaintiff's office walls.  
12 Whereas any one or possibly all of these conditions may not injure a person with a  
13 healthy pulmonary system, each circumstance caused more and more damage to  
14 Plaintiff's body.

15 Eventually, after about four years of a stalemate, Defendant offered to transfer  
16 Plaintiff out of MOEM. Plaintiff declined the offer stating that the positions offered  
17 would be a demotion. At the same time as her denial, Plaintiff pointed out to Defendant  
18 the existence of another vacant Executive Officer I position to which she would accept a  
19 transfer. Defendant did not complete the transfer at that time.

20  
21 **IV.**

22 **LAW & ANALYSIS**

1 A. Judgment as a Matter of Law

2 1. Reasonable Accommodation

3 Under the ADA, employers are prohibited from discriminating “against a qualified  
4 individual with a disability because of the disability of such individual in regard to job  
5 application procedures, the hiring, advancement, or discharge of employees, employee  
6 compensation, job training, and other terms, conditions, and privileges of employment.”  
7 42 U.S.C. § 12112(a). To establish a reasonable accommodation claim under the ADA,  
8 Plaintiff must show “(1) that she suffers from a disability, as defined by the ADA, (2) that  
9 she is an otherwise qualified individual, meaning that she is ‘nevertheless able to perform  
10 the essential functions of [her] job, either with or without reasonable accommodation,’  
11 and (3) that the [Defendant] knew of her disability and did not reasonably accommodate  
12 it.” *Bailey v. Georgia-Pacific Corp.*, 306 F.3d 1162, 1166 (1st Cir. 2002) (citations  
13 omitted).

14 **Plaintiff demonstrated that she is disabled within the meaning of the ADA.**

15 A “disability” is defined as, inter alia, “a physical ... impairment that substantially  
16 limits one or more of the major life activities of such individual.” 42 U.S.C. § 12112(a). §  
17 12102(2)(A). The EEOC regulations themselves define “physical impairment” as “[a]ny  
18 physiological disorder, or condition ... affecting one or more of the following body  
19 systems: neurological, musculoskeletal, special sense organs, respiratory (including  
20 speech organs), cardiovascular, reproductive, digestive, genitourinary, immune,  
21 circulatory, hemic, lymphatic, skin, and endocrine[.]” 29 C.F.R. § 1630.2(h)(1).

1 It is undisputed that Plaintiff suffers from bronchial asthma, an inflammation of  
2 the bronchi by a thickening of the bronchi wall and a decrease in the lining of the bronchi  
3 (the lumen), which causes the individual to struggle breathing and to have wheezes and  
4 shortness of breath (dyspnea) during even light exercises such as walking. (Docket No.  
5 154-1 at p. 84:1-10.) Moreover, the parties stipulate that “[a]sthma is a covered disability  
6 under the ADA and the Rehabilitation Act.” (Docket No. 127 at p. 3:17.) Further,  
7 breathing is a major life activity and Plaintiff produced evidence that her asthma  
8 substantially limits her ability to breathe properly. (Docket No. 154-1 at *passim*.)

9 **Plaintiff was qualified to perform the essential functions of the job, either with or**  
10 **without reasonable accommodations.**

11  
12 The second element requires the Plaintiff show that she was “qualified” for the job  
13 when the Defendant refused to transfer her to another department or facility. This means  
14 that Plaintiff must show that she had the skill, experience, education, and other job-  
15 related requirements for Executive Officer I, and could do the essential functions of the  
16 job—with or without reasonable accommodation. “[C]onsideration shall be given to the  
17 employer’s judgment as to what functions of a job are essential, and if an employer has  
18 prepared a written description before advertising or interviewing applicants for the job,  
19 this description shall be considered evidence of the essential functions of the job.” 42  
20 U.S.C. § 12111(8).

21 A “reasonable accommodation” includes:

22 (A) making existing facilities used by employees readily accessible to and  
23 usable by individuals with disabilities; and  
24

1 (B) job restructuring, part-time or modified work schedules, reassignment  
2 to a vacant position, acquisition or modification of equipment or  
3 devices, appropriate adjustment or modifications of examinations,  
4 training materials or policies, the provision of qualified readers or  
5 interpreters, and other similar accommodations for individuals with  
6 disabilities.

7  
8 42 U.S.C. § 12111(9).

9 Here, Plaintiff was employed at the level of Executive Officer I since 2007 in the  
10 microbusiness program. Her job functions included speaking at various locations to  
11 people who were interested in starting up a small business and assisting the individuals  
12 with the orientation for a successful start-up. (Docket No. 154-2 at p. 3:23-4:9). In 2010,  
13 the funding ran out for the microbusiness program and Defendant reassigned Plaintiff to  
14 the MOEM located at the Stadium. As an Executive Officer I at MOEM, Plaintiff's  
15 essential job functions included giving seminars and orientations to business people and  
16 the public in general regarding preventative and reactive events of natural disaster or  
17 other emergency situations. Additionally, Plaintiff was to supervise up to seven  
18 subordinates at MOEM.

19 There is evidentiary support for the jury's finding that Plaintiff was qualified to  
20 perform the essential functions of an Executive Officer I, with or without reasonable  
21 accommodation. "An 'essential function' is a fundamental job duty of the position at  
22 issue." *Kvorjak v. Maine*, 259 F.3d 48, 55 (1st Cir. 2001) (citing *Ward v. Massachusetts*  
23 *Health Research Institute, Inc.*, 209 F.3d 29 (1st Cir. 2000); 29 C.F.R. § 1630.2(n)(1)).  
24 "The term does not include 'marginal' tasks, but may encompass 'individual or  
25 idiosyncratic characteristics' of the job[.]" *Id.* (citation omitted).



1 Plaintiff had previously performed substantially similar job functions as an  
2 Executive Officer I in the microbusiness program, and, in fact, the similarity of the two  
3 positions was the reason the Defendant transferred her into MOEM. A reasonable jury  
4 could find that Plaintiff was able to perform the essential job function of supervising the  
5 administrative personnel at MOEM. There is no evidence that Plaintiff **could not**  
6 supervise the administrative officers at MOEM, Defendant simply pointed out that she  
7 **did not**. However, a rational jury could believe the testimony from both the Plaintiff and  
8 Mr. Alfonso Moline Robles that Plaintiff's supervisor actively prevented her from  
9 performing her supervisory duties. (Docket Nos. 145 at 64:25-65:19). Plaintiff's  
10 unwillingness to perform menial job duties not associated with the job duties of an  
11 Executive Officer I is inconsequential. *See Kvorjak*, 259 F.3d at 55. A reasonable jury  
12 reviewing the evidence could have determined that the essential job functions of an  
13 Executive Officer I differ from those of an administrative officer, and that Plaintiff was  
14 able to perform all essential job functions of an Executive Officer I with or without  
15 reasonable accommodation.

16 Defendant argues that Plaintiff must not only be able but also willing to perform  
17 the essential job duties. This is a red-herring. Defendant offers no citation for the  
18 requirement that an individual be willing to perform essential functions.  
19 Notwithstanding, there is evidence that Plaintiff **is** and **was** willing to perform the  
20 essential functions of an Executive Officer I with the accommodation for her disability.  
21 Plaintiff provided Defendant with a location of vacant Executive Officer I positions  
22 where she could be transferred. Instead, Defendant offered her locations where her job

1 functions would be that of an administrative officer. Plaintiff was not willing to  
2 essentially demote herself from an Executive Officer I to an administrative officer.  
3 Accordingly, even if willingness were a factor for consideration, a rational jury could  
4 find that Plaintiff was willing to perform the essential functions of an Executive Officer I.

5 **Defendant refused to provide Plaintiff with a reasonable accommodation for her**  
6 **disability.**

7  
8 Plaintiff claims that the Defendant discriminated against her because of her  
9 disability by failing to provide a reasonable accommodation for her disability. Defendant  
10 asserts that the request for the reasonable accommodation and the allegation regarding  
11 discrimination under the ADA are a subterfuge to obtain a transfer to another department  
12 of the Municipality and to challenge the job functions assigned to her. Under the ADA, if  
13 an employer knows that an employee has a disability and needs a reasonable  
14 accommodation to perform the essential functions of her job, the employer must provide  
15 a reasonable accommodation.

16 A rational jury could have found the following facts. Prior to her transfer into  
17 MOEM, Plaintiff challenged the transfer out of concern for her health due to the harmful  
18 conditions at the Stadium. Within 10 days of arriving at MOEM, Plaintiff's health began  
19 deteriorating. She visited Dr. Román, showing symptoms of difficulty breathing, chest  
20 pains, and wheezing. Plaintiff requested a reasonable accommodation – to be transferred  
21 out of the Stadium due to the harmful effects the stadium had on her health. Defendant  
22 took steps to clean the Stadium, and denied Plaintiff's reasonable accommodation.  
23 Plaintiff presented evidence that the conditions at the Stadium, including employees

1 smoking in the area outside her office, pigeon and cat excrement, and other general  
2 uncleanliness, persisted despite the cleaning of the Stadium. Moreover, as both the  
3 Plaintiff and Dr. Román testified, Plaintiff's health continued to significantly deteriorate.  
4 (Docket No. 154-1 at 97:12-19). Defendant received documentation from Dr. Román on  
5 at least nine separate occasions from August 2010 through February 2015, requesting that  
6 Plaintiff be moved out of the Stadium due to her health condition which was exacerbated  
7 by the filth of the Stadium. Defendant failed to move Plaintiff out of MOEM. Defendant  
8 did not request that Plaintiff submit to a consultation by a physician of its choice. At no  
9 point did Defendant argue that transferring plaintiff out of the Stadium would cause an  
10 undue hardship on it.

11        Though this court may have decided differently than the jury, the jury  
12 determination must not be overturned if there is evidence that supports the verdict. Here,  
13 a rational jury court have heard the testimony, weighed the witnesses credibility,  
14 examined the exhibits, and reached a verdict in Plaintiff's favor. Accordingly, Defendant  
15 is not entitled to judgment as a matter of law on Plaintiff's reasonable accommodation  
16 claim.

## 17            2. Retaliation

18        The ADA prohibits retaliation against "any individual because such individual has  
19 opposed any act or practice made unlawful" by the ADA. 42 U.S.C. § 12203(a).  
20 "Requesting an accommodation is protected conduct for purposes of the ADA's  
21 retaliation provision," *Freadman v. Metro. Prop. & Cas. Ins. Co.*, 484 F.3d 91, 106 (1st  
22 Cir. 2007). Complaining of discrimination on the basis of disability is also protected

1 conduct under the ADA. *Valle-Arce v. Puerto Rico Ports Authority*, 651 F.3d 190, 198  
2 (1st Cir. 2011). “To establish a claim of retaliation, a plaintiff must show that (1) she  
3 engaged in protected conduct, (2) she suffered an adverse employment action, and (3)  
4 there was a causal connection between the protected conduct and the adverse  
5 employment action.” *Id.* (citation omitted).

6 First, there is no dispute that Plaintiff engaged in protected conduct when she  
7 requested a reasonable accommodation and when she filed her charge with the EEOC on  
8 September 6, 2011.

9 Second, Plaintiff suffered adverse employment actions while at MOEM including  
10 a 45 day suspension (30 days unpaid), Defendant’s delay in considering her request for  
11 reasonable accommodation – it took 83 days for the Defendant to respond despite the  
12 regulations requiring a response within 15 days, and Defendant’s failure to transfer or  
13 otherwise reasonably accommodate Plaintiff over the course of four and a half years.

14 Third, Plaintiff established a causal connection between the adverse employment  
15 actions and her engagement in the protected conduct. Plaintiff’s prima facie case is “a  
16 small showing that is not onerous and is easily made.” *Kosereis v. Rhode Island*, 331  
17 F.3d 207, 213 (1st Cir. 2003) (citations and internal quotation marks omitted).

18 On January 11, 2012, Plaintiff received a letter from the mayor that indicated his  
19 intent to terminate her position as an Executive Officer I as a disciplinary measure for  
20 acts that occurred in 2011. In February, 2011, Plaintiff had a nervous breakdown “[d]ue  
21 to a situation of pressure and mockery by two employees by the Department of  
22 Recreation -- Sports and Recreation[.]” Despite an investigation into the incident,

1 Plaintiff was never interviewed regarding her version, nor was she disciplined prior to  
2 January 2012 for the February 2011 event.

3 The second event which led to Plaintiff's suspension took place in September  
4 2011. The Stadium lost electricity causing Plaintiff's office to lose power to her air  
5 conditioning unit. Plaintiff's office did not have a window and essentially became an  
6 oven. She and another worker at the Stadium moved their chairs out of their offices into  
7 the hallway in order to get breathable air. After two days of sitting in the hallway,  
8 Plaintiff requested that her supervisor reach out to the administration to find out what  
9 could be done about the situation as the heat was exacerbating her bronchial asthma.  
10 According to Plaintiff, her supervisor then turned to her in a hostile manner and told her  
11 that she was obligated to stay at the Stadium under the extreme conditions and that if she  
12 could not handle it she should just punch out and leave. Plaintiff found his comment very  
13 disrespectful due to both the tone and the fact that he delivered it in front of four co-  
14 workers. Plaintiff then left the office in tears. Defendant conducted an investigation by  
15 interviewing the four co-workers who witnessed the event but did not speak with  
16 Plaintiff. The report of the investigation found no fraud or deceit and recommended  
17 suspending Plaintiff for a minimum of 30 days.

18 After carefully examining the record, we believe there is ample evidence of a  
19 "pattern of antagonism" from which a jury could find a causal connection between  
20 Defendant's adverse employment actions against Plaintiff and Plaintiff's engagement in  
21 protected conduct.

1       Once a prima facie case has been presented, an inference of discrimination arises.  
2     *See Hazel v. United States Postmaster Gen.*, 7 F.3d 1, 3 (1st Cir. 1993). The burden then  
3     shifts to the employer to offer a non-discriminatory reason for the adverse employment  
4     action. *Zapata-Matos v. Reckitt & Colman, Inc.*, 277 F.3d 40, 44 (1st Cir. 2002) (citation  
5     omitted). In this case, the Defendant claims that it: 1) failed to respond to Plaintiff's  
6     reasonable accommodation request within 15 days because Plaintiff involved a lawyer; 2)  
7     suspended Plaintiff as a disciplinary measure; and 3) did not transfer Plaintiff out of  
8     MOEM because the issues she complained of had been resolved and her continued  
9     requests were merely subterfuge to facilitate a relocation.

10       When the employer offers a non-discriminatory reason for the adverse action, the  
11     inference of discrimination fades away. *Id.* at 45. The burden then shifts back to the  
12     plaintiff to show that the adverse employment action was the result of discriminatory  
13     animus. *Id.* Evidence that the employer's stated reasons are pretextual can be sufficient  
14     for a jury to infer discriminatory animus. *See Gonzalez v. El Dia, Inc.*, 304 F.3d 63, 69  
15     (1st Cir. 2002). One way to demonstrate pretext is "by showing that the employer's  
16     proffered explanation is unworthy of credence." *Reeves v. Sanderson Plumbing Prods.,*  
17     *Inc.*, 530 U.S. 133, 143 (2000) (citation and quotation marks omitted).

18       Here, Plaintiff presented photographic evidence along with testimony that the  
19     conditions present at the Stadium had not changed despite the Defendant's claim that the  
20     Stadium had been cleaned. The testimony revealed that workers continued to smoke by  
21     the time clock near Plaintiff's office.

1       The medical certifications provided by Plaintiff's physician state on-going and  
2 even worsening health problems over the course of the four and a half years at MOEM;  
3 Plaintiff provided these certificates to Defendant in the hopes that Defendant would  
4 follow the physician's recommendation and transfer Plaintiff out of the Stadium and  
5 away from the health risks. Defendant could have requested that Plaintiff's condition be  
6 examined by a physician of their choice if it truly believed that Plaintiff was malingering.  
7 Instead, we are left with the only evidence before us showing that Plaintiff's condition  
8 continued to worsen while she was employed at the Stadium.

9       Plaintiff's involvement of a lawyer did not stay Defendant's duty to investigate,  
10 consider, and advise Plaintiff of the outcome of her reasonable accommodation complaint  
11 within 15 day time frame under the regulations. Even if we would believe that the  
12 involvement of lawyers extends the time allowed, either by practice or necessity, there is  
13 no explanation for why it took Defendant 83 days to deny Plaintiff's request – especially  
14 given that Defendant had cleaned the Stadium (an act which it argues took care of  
15 Plaintiff's cleanliness complaint) within weeks of Plaintiff's reasonable accommodation  
16 request. There is simply no cognizable foundation for Defendant's excuse for failing to  
17 address Plaintiff's reasonable accommodation request for 83 days.

18       Finally, Plaintiff demonstrated that the stated reason for her suspension was  
19 pretextual. A rational jury could have found that the investigations were only performed  
20 in order to paper Plaintiff's file. The sanction of termination indicated in the mayor's  
21 letter of intent is severely disproportionate to the alleged wrongful act. The letter of  
22 intent to terminate included both events from 2011, one of which occurred nearly a year

1 prior and for which no reprimand had been given at the time. Having heard all of the  
2 evidence presented at trial, the court feels that a rational jury could have found that  
3 Defendant's disciplinary measures were merely pretext for its continued discrimination of  
4 Plaintiff for requesting a reasonable accommodation. The evidence demonstrates a  
5 consistent deliberate indifference to Plaintiff's health concerns.

6 Accordingly, there is evidence from which a rational jury could determine that  
7 Defendant's proffered reasons for its adverse actions were merely pretext, and Defendant  
8 is not entitled to judgment as a matter of law on Plaintiff's retaliation claim.

9 B. Motion for New Trial & Remittitur

10 "A new trial is warranted only if the verdict, though rationally based on the  
11 evidence, was so clearly against the weight of the evidence as to amount to a manifest  
12 miscarriage of justice." *Bogosian v. Mercedes-Benz of North America*, 104 F.3d 472,  
13 482 (1st Cir. 1997) (citations and internal quotation marks omitted). A trial court must  
14 exercise its discretion in favor of granting a new trial very sparingly, since "a jury's  
15 verdict on the facts should only be overturned in the most compelling circumstances."  
16 *Wells Real Estate, Inc. v. Greater Lowell Bd. of Realtors*, 850 F.2d 803, 811 (1st Cir.  
17 1988). Since the jurors are the ultimate triers of fact, "the trial court is especially  
18 reluctant to order a new trial when the verdict rendered rested upon the jury's  
19 determination of the credibility of witnesses". *Raybourn v. San Juan Marriott Resort and*  
20 *Stellaris Casino*, 259 F.Supp.2d 110, 112 (D.P.R. 2003) (citing *Ríos v. Empresas Líneas*  
21 *Marítimas Argentinas*, 575 F.2d 986, 990 (1st Cir. 1978)). Therefore, where the jury  
22 verdict is reasonably based on the evidence presented at trial, the court may not upset the



1 verdict merely because he or she might have decided the case differently. *Velázquez v.*  
2 *Figueroa-Gómez*, 996 F.2d 425, 428 (1st Cir. 1993).

3 Generally, a jury's verdict should not be disturbed unless it is "grossly excessive,"  
4 "inordinate," "shocking to the conscience of the court," or "so high that it would be a  
5 denial of justice to permit it to stand." *Segal v. Gilbert Color Sys., Inc.*, 746 F.2d 78, 80–  
6 81, (1st Cir. 1984) (quoting *McDonald v. Federal Laboratories*, 724 F.2d 243, 246 (1st  
7 Cir. 1984)). A jury's award should only be reversed if it is "so grossly disproportionate  
8 to any injury established by the evidence as to be unconscionable as a matter of law."  
9 *Koster v. TWA*, 181 F.3d 24, 34 (1st Cir. 1999). A remittitur is appropriate "only when  
10 the award exceeds any rational appraisal or estimate of the damages that could be based  
11 upon the evidence before it." *Trainor v. HEI Hospitality, LLC*, 699 F.3d 19, 29 (1st Cir.  
12 2012) (quoting *Wortley v. Camplin*, 333 F.3d 284, 297 (1st Cir. 2003)). When a court  
13 decides that a remittitur is warranted, the verdict winner will be allowed the option of  
14 either accepting the reduced amount or a new trial. *Liberty Mutual Insurance Company v.*  
15 *Continental Casualty Company*, 771 F.2d 579, 588 (1st Cir. 1985).

16 Here, the jury award is split into two parts: Part 1 is \$1,500,000 to compensate  
17 Plaintiff's physical damages and/or deterioration of her health condition as a result of  
18 Defendant's discrimination and/or retaliation; and Part 2 is \$1,500,000 to compensate  
19 Plaintiff's mental pain and anguish. The jury award was then doubled under Puerto Rico  
20 law.

21 The jury's verdict "shocks the conscience of the court" and far exceeds any  
22 rational amount based on the evidence presented at trial. Plaintiff and Dr. Román

1 testified regarding the physical damage and emotional pain and suffering that Plaintiff  
2 experienced during her time at MOEM. Dr. Román detailed Plaintiff's lung deterioration  
3 and physiological symptoms resulting from her time at MOEM. Plaintiff herself testified  
4 about her fear of dying from an asthma attack, the side effects of all the medications she  
5 requires because of the conditions at the Stadium, and the emotional hardship she went  
6 through for four and a half years wanting to perform the job duties of an Executive  
7 Officer I, but being unable to do so.

8 Despite this testimony, the \$6 Million verdict is more than "extremely generous,"  
9 it is grossly excessive. Plaintiff produced no evidence of her medical expenses; in fact,  
10 the evidence shows that she does not have any medical expenses. There is no evidence  
11 that Plaintiff ever sought psychiatric or psychological treatment for her alleged  
12 depression.<sup>2</sup> Despite not performing any job functions while at MOEM, with the  
13 exception of her 30 day suspension, Plaintiff received a paycheck at the salary  
14 commensurate with an Executive Officer I.

15 Plaintiff is able to work in a location other than the Stadium. There was no  
16 testimony that Plaintiff's health would continue to deteriorate once she was removed  
17 from the Stadium. In fact, Dr. Román stated that if Plaintiff stayed, eventually her  
18 condition would become irreversible, but that typically, the health problems associated  
19 with bronchial asthma are temporary and abate once the conditions creating them no  
20 longer exist. Such is the case here. Plaintiff no longer works at the Stadium; she has

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<sup>2</sup> "Although testimony from a mental health expert is not required to sustain an award for emotional distress, the absence of such evidence is useful in comparing the injury to the award of damages." *Koster*, 181 F.3d at 35.

1 been transferred as an Executive Officer I to the Office of Elderly Affairs, effective  
2 March 24, 2015.

3 Having determined that the jury's verdict cannot stand, the court turns now to  
4 determine the appropriate amount. Under the "maximum recovery rule," the court directs  
5 a remittitur geared to the maximum recovery for which there is evidentiary support.  
6 *Koster*, 181 F.3d at 36. In making its decision, this court remains "mindful that  
7 translating legal damage into money damages—especially in cases which involve few  
8 significant items of measurable economic loss—is a matter peculiarly within a jury's  
9 ken." *Trainor*, 699 F.3d at 32 (internal quotation marks omitted) (citing *Sanchez v. P.R.*  
10 *Oil Co.*, 37 F.3d 712, 723 (1st Cir. 1994)). Though the evidence presented at trial dictates  
11 the amount of remittitur, examination of other cases is useful in reaching a decision. *See*  
12 *Koster*, 181 F.3d at 36. In *Koster*, the First Circuit concluded that an emotional distress  
13 award of \$716,000 was excessive and that the evidence would support a maximum  
14 recovery of \$250,000. *Id.* There, "[t]here was no evidence that Koster ever sought  
15 medical treatment or suffered any long-term depression or incapacitation" and opened a  
16 business of his own after losing his job. *Id.* Additionally, the Court recognized that  
17 Koster could have remained with his employer, "albeit in a different job with a reduced  
18 salary." *Id.*

19 In *Aponte-Rivera v. DHL Solutions (USA), Inc.*, the First Circuit upheld the district  
20 court's decision to remit the jury award from \$350,000 to \$200,000 for emotional distress  
21 where the plaintiff "did not introduce any testimony by a medical expert, presented no  
22 notable evidence of outward manifestations of emotional distress, and presented no

1 evidence of long term depression or medical treatment.” 650 F.3d 803, 811 (1st Cir.  
2 2011). In *Sanchez*, the circuit upheld a district court’s reduction from \$150,000 to  
3 \$37,000 for emotional distress where the plaintiff testified he was humiliated losing his  
4 job and having to file bankruptcy but produced no medical or psychiatric testimony  
5 regarding same. 37 F.3d at 724. As explained in *Aponte-Rivera*,

6 We have also upheld damages awards where the plaintiff did not seek  
7 medical treatment or have long-term physical symptoms. *See McDonough*  
8 *v. City of Quincy*, 452 F.3d 8, 22 (1st Cir. 2006) (upholding award of  
9 \$300,000 in Title VII retaliation case, where “the bulk” of the award was  
10 for emotional distress in the form of humiliation and damage to reputation  
11 and family relationships); *Rodriguez-Torres*, 399 F.3d at 64 (affirming a  
12 \$250,000 emotional distress award where plaintiff testified that  
13 employment discrimination caused her marriage to suffer and made her  
14 depressed); *Koster*, 181 F.3d at 35–36 (upholding \$250,000 award where  
15 plaintiff testified that employer’s conduct caused him to suffer anxiety and  
16 insomnia and damaged his family life).

17  
18 650 F.3d at 811.

19 Having presided over the trial and observed the Plaintiff and the other witnesses  
20 first hand, this court “is in the best position to assess the evidence and set an amount for  
21 remittitur.” *Anthony v. G.M.D. Airline Services, Inc.*, 17 F.3d 490, 496 (1st Cir. 1994).  
22 Without impinging on the function of the jury, the court states that there were many  
23 issues of Plaintiff’s credibility that do not appear in the black and white of a trial  
24 transcript but were apparent to this experienced judge who had the opportunity to  
25 personally observe tone and body language. Among those perceptions was Plaintiff’s  
26 litigious nature from her initial receipt of the transfer letter in June of 2010, her  
27 unwillingness to compromise, her relentless defiance, and the undercurrent from day one  
28 that she simply did not want to be relocated at the Stadium and was dead set on obtaining

1 a transfer no matter what the cost. There is no better example of this mindset than  
2 Plaintiff's unwillingness to accept a transfer – primarily on principle – in the face of her  
3 assertion that she was daily subjected to life threatening conditions. Plaintiff argues that  
4 the positions offered to her were for a position inferior to that of an Executive Officer I –  
5 but with the same salary as the Executive Officer I position. Even accepting that as true,  
6 the court must consider the fact that Plaintiff refused to remove herself from an area that  
7 was allegedly so harmful to her health that she feared death. *See Koster*, 181 F. 3d at 36.  
8 While not dispositive with respect to her credibility, the fact that Plaintiff could assert  
9 life-threatening conditions yet decline a transfer is certainly suggestive of exaggerated  
10 damages.

11 After a careful review of the record and analogous cases, the court hereby reduces  
12 Plaintiff's award for damages to One Hundred Fifty Thousand Dollars (\$150,000.00), to  
13 compensate Plaintiff for her physical damages and/or deterioration of her health  
14 condition, and One Hundred Fifty Thousand Dollars (\$150,000.00) to compensate  
15 Plaintiff for her mental pain and anguish. The \$300,000 award, if accepted by Plaintiff,  
16 is then doubled to \$600,000.00 under Puerto Rico law. If Plaintiff refuses to remit to  
17 \$600,000.000, a new trial will be held on all issues. A new trial on all issues is warranted  
18 on the grounds that failing to do so would constitute an injustice because the jury's  
19 verdict against Defendant of \$3,000,000.00 (which was doubled under Puerto Rico law)  
20 was not supported by legally sufficient evidence at trial. Moreover, given the nature of  
21 the claims raised by Plaintiff, her damage claims are so intertwined with her underlying

1 claims regarding liability that a retrial on solely damages would result in juror confusion  
2 too substantial to overcome with instructions and caveats from the court.

3 **V.**

4 **CONCLUSION**

5 Defendant's motion for judgment notwithstanding the verdict is DENIED.  
6 Defendant's motion for new trial is GRANTED, conditioned upon the refusal of Plaintiff  
7 Gonzalez to remit \$5,400,000. If Plaintiff agrees within thirty days of the date of this  
8 order to remit this sum, Defendant's motion for new trial shall be denied. If Plaintiff  
9 refuses within the specified time to remit the sum noted above, Defendant's motion for  
10 new trial will be granted.

11 **IT IS SO ORDERED.**

12 San Juan, Puerto Rico, this 26th day of June, 2015.

13 S/José Antonio Fusté  
14 JOSE ANTONIO FUSTE  
15 U. S. DISTRICT JUDGE